**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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|---|---|
| BMC Software, Inc., | |
| Plaintiff, | |
| -against- | Civil Action No. 2:16-cv-132 |
| ServiceNow, Inc. | JURY TRIAL DEMANDED |
| Defendant. | |

**COMPLAINT FOR PATENT INFRINGEMENT**

BMC Software, Inc. ("BMC"), by and through its undersigned attorneys, based upon personal knowledge with respect to its own actions and on information and belief as to other matters, for its complaint avers as follows:

**THE PARTIES**

**A.      BMC Software**

1.      Plaintiff BMC is a leading provider of information technology (IT) service management systems and serves thousands of customers around the globe, from small and mid-size businesses to the largest companies in the world.  BMC is a corporation organized under the laws of Delaware with its headquarters at 2103 CityWest Boulevard, Houston, Texas 77042.

2.      BMC was founded in Houston, Texas in 1980, and has grown to become one of the world's leading software providers.

3.      Today, BMC has approximately 6,000 employees who support 10,000+ customers across the globe, including many of the world's largest companies.

4.      BMC's IT service management systems enable companies to easily manage, track, and service the ever-increasing number of disparate and heterogeneous network servers, computers, printers, software applications, and other IT resources needed across one or more networked computer systems (an "enterprise"), to ensure users are not disrupted in their business activities.

**B.      ServiceNow**

5.      Defendant ServiceNow, Inc. ("ServiceNow") is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Texas, with its headquarters at 2225 Lawson Lane, Santa Clara, California 95054.

6.      ServiceNow maintains numerous offices around the world, and is doing business in the Eastern District of Texas, with an office at 6900 North Dallas Parkway, Suite 750, Plano, Texas 75024.

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**BMC'S TECHNOLOGIES AT ISSUE**

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7.      BMC was started with the realization that business performance for any company depends on IT performance. This business reality set the goal of its IT service management ("ITSM") systems then and now—to closely link a customer's business services ("Business Services") to its IT resources. To meet that goal, enterprise-class ITSM systems must meet demanding requirements.  To maintain the performance of a customer's Business Services and minimize downtime, data characterizing the configuration, provisioning, and health status of the software and hardware IT resources delivering those Business Services must be maintained in a Configuration Management Database ("CMDB") in a timely, complete, and accurate manner. The CMDB data serves to logically represent the IT resources of the enterprise, and as such is critical to the central functions of ITSM suites—including but not limited to Incident and

Problem Management, Configuration Management, and Change and Release Management.  To keep up with ongoing changes in those Business Services and in the IT resources of an enterprise, the components of an ITSM system, including the CMDB, must be as automated as much as possible, keeping manual intervention to a minimum.  And, to deliver ITSM coverage to all Business Services, ITSM systems and tools need to be extensible across a customer's disparate heterogeneous IT resources and procedures and highly customizable to meet the discovery and service monitoring needs unique to each customer.

8.      To design and develop the core technologies that underlie modern ITSM systems, BMC made enormous investments over many years in research and development, as well as significant acquisitions. From these investments, BMC created and refined the technologies that make modern ITSM systems possible.

9.      To that end, BMC has invested approximately $8 billion in research and development during the past 34 years to help build many of today's leading IT service management solutions.  The results of these efforts are highly valuable and patented innovations.

10.      BMC's large investments in research and development have enabled the development of numerous technologies necessary for an enterprise to build and deploy both on-premise and Cloud-based IT service management systems. These fundamental IT service management technologies span the core functions of a modern ITSM system, including:

(i)      Mid-Server Cloud Communications: Certain key elements of IT service management systems can be delivered today by software running outside the enterprise firewall—such elements are often referred to as running in the "Cloud."  To be acceptable to customers, Cloud-based elements have to be able to communicate reliably and efficiently with enterprise systems that lie inside the firewall, without compromising the security of that firewall.

To meet that fundamental requirement, BMC's engineers invented and developed Mid-Server technologies to allow ITSM elements that lie inside the firewall—such as discovery probes and sensors used to discover enterprise resources—to communicate with external Cloud-based ITSM systems without compromising firewall integrity and enterprise security ("*Mid-Server Cloud Communications*").

(ii)     CMDB Normalization:  In addition to BMC's work in developing the modern CMDB architecture noted below, BMC's engineers developed software tools and related technologies for automatically processing incoming data characterizing the IT resources of an enterprise so as to make such IT data in the CMDB consistent across the different offices and locations of a company, including across different networked servers, computers, printers, and software applications (this process is referred to as "*CMDB Normalization*").

(iii)    CMDB Hierarchical Dynamic Inheritance:  To simply and automatically track the configuration, provisioning, and health status of the IT resources across an enterprise, BMC's engineers invented and developed technologies fundamental to the modern architecture of a CMDB.  These foundational technologies include, for example, a CMDB architecture that logically models the IT resources of an enterprise using hierarchical, object-oriented Configuration Items (CIs) employing dynamic inheritance ("*CMDB Hierarchical Dynamic Inheritance*").

(iv)    Meta-Data Driven Service Monitoring Tools: Recognizing that a critical aspect of IT service management is measuring the performance of IT resources and Business Services, BMC's engineers developed technologies for Cloud-based or on-premise ITSM systems that allow for service monitoring tools to be modular in manner and customizable through meta-data. In this way, BMC's service monitoring tools provide customers with the flexibility necessary to

meet the specific service monitoring needs of their enterprise ("*Meta-Data Driven Service Monitoring Tools*").

(v)     Synthetic Transaction Monitoring Tools:   Business Services must be closely monitored, not only to check that they are functioning, but also to check that their performance is at the desired level.   In response to that need, BMC's engineers developed foundational technologies for recording Business Service transactions, replaying them to the Business Service, and checking the results to confirm that the Business Service is operating correctly.   This approach, known as "Synthetic Transaction Monitoring," has been widely adopted across the industry as a fundamental element in performance analytics; the tools that implement the technology are referred to as "*Synthetic Transaction Monitoring Tools.*"

(vi)    Customizable Discovery Tools:   BMC's engineers also developed interpretable software tools and related technologies using a Cloud-based or on-premise ITSM system for discovering custom data types about the IT resources of an enterprise, including across disparate and heterogeneous IT systems.   These discovery tools allow for collecting the specific IT data needed by service monitoring tools to evaluate the performance of IT resources and Business Services unique to each enterprise customer.   Such Discovery tools are referred to as "*Customizable Discovery Tools.*"

11.    To encourage these and its many other innovations, BMC has an Inventor Recognition Program designed to recognize and reward employees for their inventions. Invention and innovation are so central to the company's success that employees' contributions are rewarded financially and also recognized through the memorialization of their names and patents on BMC's Patent Wall.  BMC maintains a Patent Wall in many of its company offices around the world, including at its Houston headquarters.

12.     To ensure that companies do not free-ride on BMC's enormous investments in research and development, BMC relies on the protection of its core innovations and the enforcement of its intellectual property rights to those innovations, including the hundreds of patents awarded to BMC's employees for their innovations.

13.     BMC's ability to earn sufficient profits to support its ongoing innovations is harmed when others misappropriate these patented technologies and offer them at below market prices—those infringers do not need to recoup BMC's enormous research and development investments.  If such infringement is permitted, BMC will be unable to continue to make the kinds of investments needed to develop and grow the industry.  And, ultimately, this will have an adverse impact on BMC's ability to continue to create thousands of jobs for the people of Texas and many others worldwide.

14.     BMC's IT service management innovations are the subject of more than 450 current and pending patents before the U.S. Patent and Trademark Office. From this portfolio, BMC has selected a group of patents to assert in this action spanning the IT management solution areas described above to demonstrate the scope and strength of BMC's innovations and its patent portfolio, and to show ServiceNow's unabated, widespread infringement of BMC's intellectual property rights.
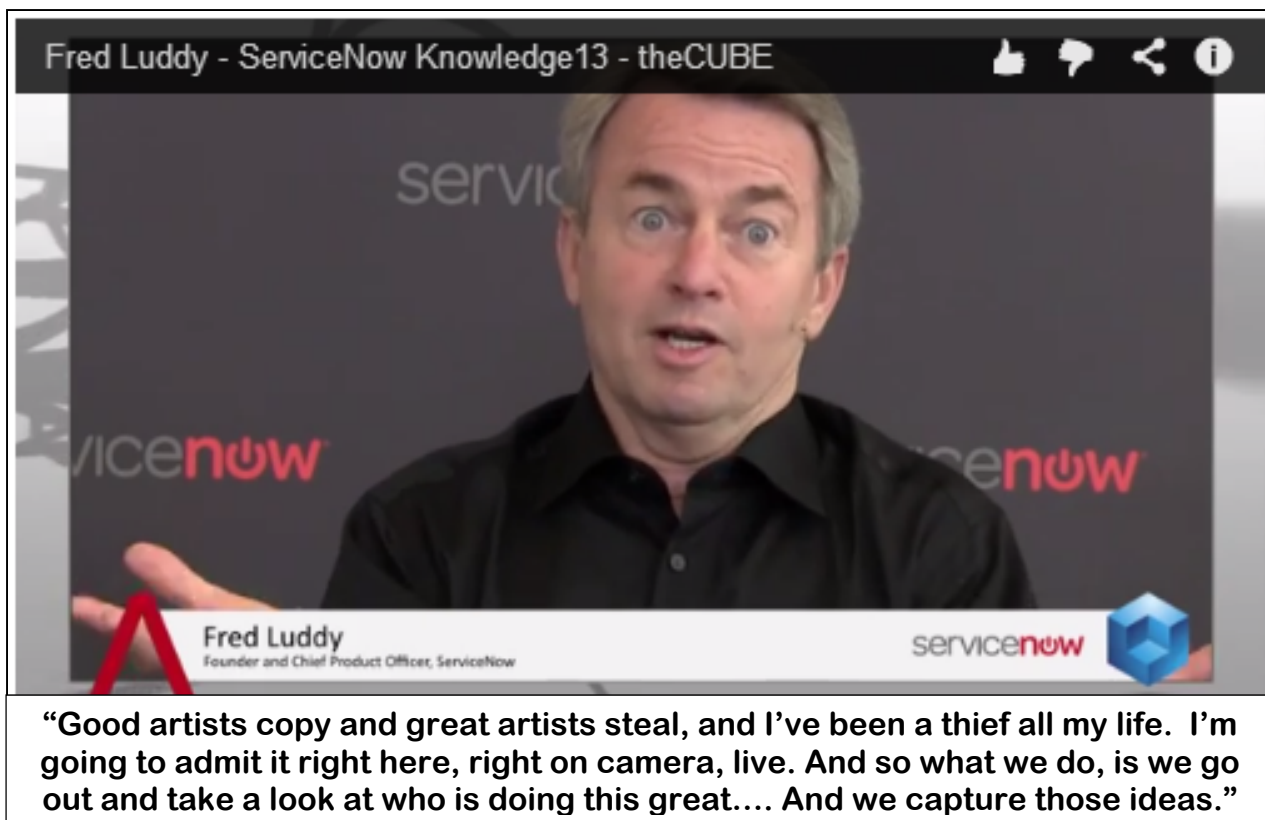
## SERVICENOW'S USE OF BMC'S TECHNOLOGIES

15.     ServiceNow has not innovated like BMC, and prior to December 2015 (several years after its founding) had no patents of its own. Instead, ServiceNow's business is largely built upon its infringement of BMC's patented technologies.

16.     During a May 2013 interview, ServiceNow's founder, Fred Luddy, explained his attitude towards the intellectual property rights of others and the "secret sauce" behind ServiceNow's business. Mr. Luddy made known his general disregard for the intellectual property rights of others by citing his belief that "everything that had been invented and was going to be invented had already been invented." Mr. Luddy then went on to explain as follows: "good artists copy and great artists steal, and I've been a thief all my life. I'm going to admit it right here, right on camera, live. And so what we do, is we go out and take a look at who is doing this great…. And we capture those ideas."[1]

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[1] ServiceNow Knowledge13, https://www.youtube.com/watch?v=-MiRSG116pk, [5:35-6:15].

Fred Luddy - ServiceNow Knowledge13 - theCUBE

Fred Luddy
Founder and Chief Product Officer, ServiceNow

servicenow

**"Good artists copy and great artists steal, and I've been a thief all my life.  I'm going to admit it right here, right on camera, live. And so what we do, is we go out and take a look at who is doing this great…. And we capture those ideas."**

17.      Luddy is absolutely correct: ServiceNow is unlawfully using many of BMC's patented technologies. Indeed, each significant aspect of ServiceNow's business is built around infringement of BMC's patents, and ServiceNow's website touts its offerings of IT management technologies that are the subject of numerous BMC patents, including such important technologies as: (i) Mid-Server Cloud Communications, (ii) CMDB Normalization, (iii) CMDB Hierarchical Dynamic Inheritance, (iv)    Meta-Data Driven Service Monitoring Tools, (v) Synthetic Transaction Monitoring Tools, and (vi) Customizable Discovery Tools.[2]

18.      Despite having knowledge of BMC's patents, and its infringement of those patents, ServiceNow continues to release new versions of its IT management systems that

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[2] *E.g.*, http://www.servicenow.com/products-by-category.html.

infringe BMC's patents. For example, in December 2015, ServiceNow announced the availability of its Geneva release.[3]

19.     As illustrated below from ServiceNow's website, each of these BMC technologies, which ServiceNow continues to offer in its recent Geneva release, is critical to ServiceNow's ability to provide modern IT management solutions to customers:

| ServiceNow Product Offering/Technology | Importance to IT Management |
| --- | --- |
| MID Server Cloud Communications | ServiceNow uses its MID Server to facilitate enterprise to cloud "communication and movement of data between the ServiceNow platform and external applications, data sources, and services."[4] |
| CMDB Normalization | ServiceNow's CMDB "Normalization forces the platform to convert different forms of the same field value to a single, accepted value automatically."[5] |

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[3]  *E.g.*, https://community.servicenow.com/community/product-launch/blog/2015/12/08/the-geneva-release-is-now-available; https://community.servicenow.com/docs/DOC-4562.

[4] https://docs.servicenow.com/product/mid_server/concept/c_MIDServer.html.

[5] https://docs.servicenow.com/administer/field_administration/concept/c_FieldNormalization.html.

| ServiceNow Product Offering/Technology | Importance to IT Management |
|---|---|
| **CMDB Heirarchical Dynamic Inheritance** | As stated by ServiceNow "You need to know exactly what assets are in your IT environment and have current, accurate configuration data in order to effectively manage, much less improve, your systems. Without an effective configuration management database (CMDB), it's difficult to understand your organization's IT environment, particularly in the areas of business service impact analysis, asset management, compliance, and configuration management."[6] ServiceNow's CMDB architecture supports the storage of Configuration Items (CIs) that implement hierarchical "CI relationships," "consumable parts," and "license modeling" for compliance purposes.[7] |
| **Meta-Data Driven Service Monitoring Tools** | Service Monitoring is used in ServiceNow's IT management system to "align resources, systems, and employees to strategic objectives and priorities.[8] "Executives and business service owners need visibility into the performance of their organizations in order to improve business service quality, increase enterprise agility, and show business value.… With ServiceNow Performance Analytics, executives and business service owners can access the most important and actionable information anytime and anywhere, to drive decisions and behavioral change that improve enterprise performance, decisions, and behavioral change that improve IT and enterprise performance."[9] |

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[6] http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html.
[7] *See, e.g.*, http://wiki.servicenow.com/index.php?title=Defining_CI_Relationships;
http://wiki.servicenow.com/index.php?title=Inventory_Management;
http://wiki.servicenow.com/index.php?title=Software_License_Management.
[8] https://docs.servicenow.com/use/performance_analytics/concept/c_PerformanceAnalytics.html
[9] http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-performance-analytics.pdf

| ServiceNow Product Offering/Technology | Importance to IT Management |
|---|---|
| **Synthetic Transaction Monitoring Tools** | ServiceNow's "Synthetic (user experience) monitors enable you to monitor the performance of an entire business service from the user's perspective."[10] |
| **Customizable Discovery Tools** | ServiceNow's Discovery includes the process of discovering custom data types about IT resources for service monitoring of "computers and other devices connected to an enterprise's network," which, as ServiceNow's website notes, is "a critical step to automating service management."[11] |

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[10] http://wiki.servicenow.com/pdf/ServiceWatch_User_Guide_ver_36.pdf.
[11] https://docs.servicenow.com/product/discovery/concept/c_Discovery.html?scroll=c_Discovery_unique_1;
http://www.servicenow.com/products/discovery.html.

20.     These technologies are critical to ServiceNow's business.  Indeed, the CMDB and MID Server components of ServiceNow's Automation Suites, which use BMC's Mid-Server Cloud Communications and CMDB technologies, are prominently illustrated in ServiceNow's marketing materials, in recognition of their importance:
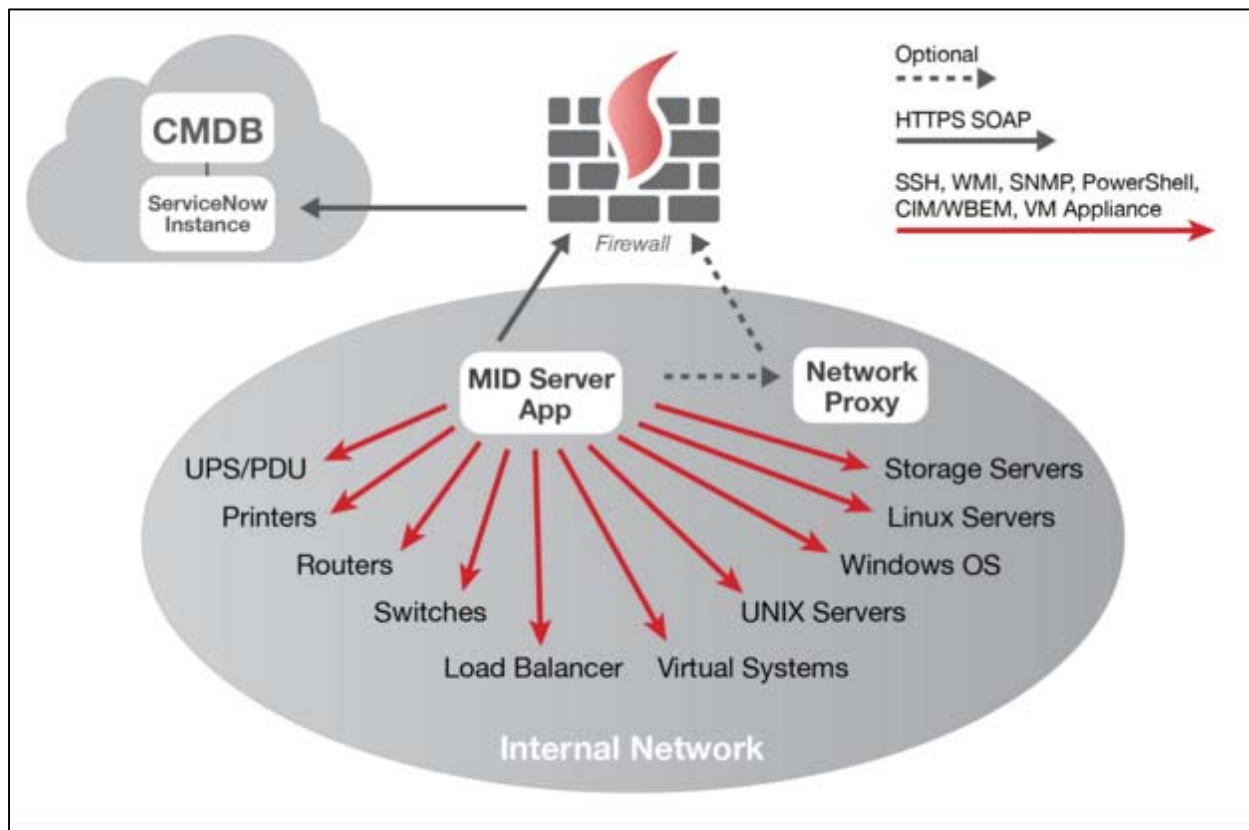


21.     As a further example of the importance of BMC's CMDB technologies to ServiceNow's business, Craig McDonough, Sr. Product Marketing Manager at ServiceNow, explained that a CMDB should "have built-in reconciliation and normalization capabilities to

ease the burden of these integrations."[12]   In addition, ServiceNow advertises that "Built-in data reconciliation and normalization features ensure consistently accurate and useful data."[13]

22.     In addition, ServiceNow's recent strategic initiatives demonstrate the importance of BMC's other patented technologies to ServiceNow's business, including BMC's discovery and service monitoring technologies.  On July 9, 2014, ServiceNow announced that it would acquire Neebula Systems for approximately $100 million.   Neebula's flagship product, ServiceWatch, automates the discovery, mapping, and service monitoring of IT-enabled enterprises. ServiceNow touted that ServiceWatch would soon become an integral part of ServiceNow's Service Automation Suites and related products.

23.     ServiceNow has integrated ServiceWatch into its Geneva release. Many of ServiceWatch's mechanisms are now migrated to their ServiceNow equivalents.[14]  ServiceNow warns its customers that "[i]f you are not using the latest Geneva release of ServiceNow, you will be missing out on the powerful synergy of the ServiceWatch suite."[15]

24.     ServiceNow has made it clear that the ultimate goal of its infringing activities is to destroy BMC's reputation and business. Among other things, ServiceNow's Chief Executive Officer Frank Slootman has gone on record with statements about BMC such as:

(i)     "We have been dismantling [BMC's] business left, right, and center."

(ii)     "We have taken the whole company down."

(iii)     "I fear for their future because we're going to drive a truck right through it . . . ."

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[12] http://apmdigest.com/cmdb-servicenow.
[13] https://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-configuration-management.pdf.
[14] https://docs.servicenow.com/release_notes/it_operations_mgmt/r_ServiceMappingRN.html.
[15] https://community.servicenow.com/community/operations-management/discovery/blog/2016/01/22/servicewatch-suite-on-servicenow-geneva.

25.     These statements by ServiceNow's CEO and the statements of its founder, Fred Luddy, demonstrate that ServiceNow is unlawfully reaping the fruits of BMC's investments in research and development (i.e., BMC's patented innovations) and with the purpose of irreparably harming BMC.  ServiceNow is also deliberately losing money in the short-term and offering competing products at cut-rate prices for the same purpose, which ServiceNow can do only because it did not make the enormous investments in research and development that were required to build each of these foundational technologies.

## JURISDICTION AND VENUE

26.     This is a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284, and 285.  This court has jurisdiction of such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

27.     Personal jurisdiction is proper in the State of Texas and in this judicial district. Among other things, Defendant conducts business, sells infringing products, and is engaged in activities that infringe BMC's IT service management patents in the State of Texas and in this judicial district.

28.     Venue is proper under 28 U.S.C. §§ 1391 and 1400(b).

## THE PATENTS IN SUIT

29.     On January 25, 2011, the USPTO duly and legally issued United States Patent No. 7,877,783 ("the '783 patent") entitled "System and method for secure communications with a remote software program."  BMC holds all substantial rights, title, and interest to the '783 patent. A true and correct copy of the '783 patent is attached as Exhibit A.

30.     Cloud-based elements of ITSM systems must be able to communicate with all of the hardware and software IT infrastructure that lies behind the customer's firewall; those

communications are mediated by a process known as the "Mid-Server."  The integrity of that firewall is critical to enterprise security—ITSM systems should not require any firewall opening beyond those already in place.  BMC's Mid-Server Architecture patent (the '783 patent) teaches the means by which communication between Mid-Server and Cloud can be securely and flexibly mediated using the same protocols used in enterprise Web communications, i.e., with no changes to the firewall.  The ability to deploy Cloud-based ITSM systems without compromising firewall integrity is critical to ServiceNow's Service Automation Suites and ServiceWatch offerings; compromising a firewall's integrity would be unacceptable to ServiceNow's customers.

31.     On October 8, 2013, the USPTO duly and legally issued United States Patent No. 8,554,750 ("the '750 patent") entitled "Normalization engine to manage configuration management database [CMDB] integrity."  BMC holds all substantial rights, title, and interest to the '750 patent.  A true and correct copy of the '750 patent is attached as Exhibit B.

32.     BMC's '750 patent teaches automatically normalizing incoming IT data populated into the CMDB, and is critical to maintaining the consistency of the IT data stored in the CMDB.  Without use of the '750 patent, ServiceNow's customers would be forced to manually normalize that information—such manual normalization would materially impact the timeliness and accuracy of the IT data in the CMDB and would be unacceptable to ServiceNow's customers.

33.     On May 17, 2005, the USPTO duly and legally issued United States Patent No. 6,895,586 ("the '586 patent") entitled "Enterprise management system and method which includes a common enterprise-wide namespace and prototype-based hierarchical inheritance." BMC holds all substantial rights, title, and interest to the '586 patent.  A true and correct copy of the '586 patent is attached as Exhibit C.

34.     The CMDB lies at the core of BMC's and ServiceNow's Suite offerings, serving as the central repository for data characterizing the configuration, provisioning, and health status of the IT resources of an enterprise.  BMC's CMDB patent for hierarchical dynamic inheritance (the '586 patent) is essential for the automatic updating of IT data in the CMDB as a customer's software and hardware IT infrastructure changes, which happens constantly.  Without use of the '586 patent, ServiceNow's customers would be forced to manually maintain that information—such manual updating would materially impact the timeliness and accuracy of the IT data in the CMDB and would be unacceptable to ServiceNow's customers.

35.     ServiceNow unsuccessfully tested the validity of the '586 patent last year before the United States Patent Office.  On June 2, 2015, ServiceNow filed a Petition for *Inter Partes* Review with the Patent Office, alleging that claims 1, 4, and 7 of the '586 patent were invalid. The Patent Office rejected the petition in its entirety on December 18, 2015.

36.     ServiceNow recognizes the importance of an accurate and up-to-date CMDB in its technical and marketing materials, including in the following quote from its datasheet:  "IT organizations rely on the Configuration Management Database (CMDB) to manage infrastructure changes and diagnose problems. But many CMDBs struggle to remain current and do not contain the right type of information to drive processes effectively. As a result, IT staff cannot determine which business services are affected by changes, failures, or performance issues—nor can they easily determine root causes when a business service experiences problems."[16]

37.     On November 9, 2004, the USPTO duly and legally issued United States Patent No. 6,816,898 ("the '898 patent") entitled "Interfacing external metrics into a performance

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[16] https://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-discovery.pdf.

management system."  BMC holds all substantial rights, title, and interest to the '898 patent.  A true and correct copy of the '898 patent is attached as Exhibit D.

38.     BMC's '898 patent includes at least two key innovations.  The first innovation in the '898 patent is directed to service monitoring tools for measuring the performance of a customer's IT resources and processes and allows for these tools to be modular and customizable through meta data to meet the specific service monitoring needs of an enterprise.  Another innovation in the '898 patent is directed to discovery tools for collecting data of the IT resources of an enterprise.  BMC's engineers invented interpretable discovery tools that can be customized to collect custom data types not provided by the performance system from the IT resources of the enterprise that are specific to the unique service monitoring needs of each enterprise customer.  ServiceNow's use of the '898 patent means that data elements that are best managed or retrieved outside the core ServiceNow system can still be included in its overall data architecture, with all necessary logic and functionality inside.  This use of BMC's technology thus enhances the flexibility of the ServiceNow platform and allows it to better manage complexity and meet the specific priorities and unique needs of each customer.  Further, ServiceNow's use of the '898 patent allows its products to use smaller, customizable discovery tools that can be tailored to the specific end-use application; absent ServiceNow's use of this BMC technology, the effectiveness of their Discovery and Performance Management solutions, and their ability to provide an Enterprise-Wide Service Management solution, would be significantly degraded.

39.     ServiceNow sought to test validity of the '898 patent last year before the United States Patent Office.  On July 17, 2015, ServiceNow filed a Petition for *Inter Partes* Review with the United States Patent Office, alleging that all claims from the patent were invalid.  The Patent Office rejected the petition in its entirety on January 26, 2016.

40.     On June 21, 2011, the USPTO duly and legally issued United States Patent No.

7,966,398 ("the '398 patent") entitled "Synthetic transaction monitor with replay capability."

BMC holds all substantial rights, title, and interest to the '398 patent.  A true and correct copy of

the '398 patent is attached as Exhibit E.

41.     BMC's '398 patent teaches a synthetic transaction monitor with replay capability

that allows ServiceNow customers to gauge the performance of their web applications and

services from the perspective of the client.  BMC's '398 patent is critical to the ability to rapidly

and preemptively diagnose problems.  Without use of the '398 patent, the alternative would

substantially increase the time required to identify and diagnose immediate and incipient faults,

and would degrade ServiceNow's customer's ability to monitor the performance of its web

applications and services.

## SERVICENOW'S INFRINGING PRODUCTS

42.     ServiceNow has infringed, and continues to infringe, directly and indirectly

through induced and/or contributory infringement, the asserted patents by making, having made,

using, offering to sell, selling, and/or providing installation, operational support, and instructions

for one or more of the suites and products identified in this Complaint, including the ServiceNow

Service Automation Suites and related products within, but not limited to, its recent Geneva

release.  Such suites and products include ServiceNow Incident Management, ServiceNow

Problem Management, ServiceNow Performance Analytics, ServiceNow Business Services

Management Map, ServiceWatch (including Service Mapping and Event Management),

ServiceNow IT Operations Management, ServiceNow Configuration Management, including the

ServiceNow   Configuration   Management   Database   (CMDB),   ServiceNow   Discovery,

ServiceNow Orchestration (formerly known as ServiceNow Runbook Automation), and ServiceNow Change and Release Management.

## COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 7,877,783

43.     Paragraphs 1 through 42 are incorporated as if fully set forth herein.

44.     On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, at least claims 1, 2, 7, 8, 9, 10, and 13 of the '783 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release.

45.     For example, ServiceNow has directly infringed at least claims 1, 2, 7, 8, 9, 10, and 13 of the '783 patent by making, using, offering to sell, and/or selling ServiceNow instances in communication with MID Servers, including but not limited to ServiceNow's Geneva release, in a manner that infringes the claims of the '783 patent.   ServiceNow MID Server communications are initiated inside the enterprise's firewall using HTTPS and therefore do not require any special firewall rules or VPNs.[17]  ServiceNow MID Server communications are formatted according to a one-way protocol as claimed in the '783 patent.

46.     On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '783 patent for at least the following reasons. ServiceNow has had actual notice of the '783 patent no later than the filing date of this Complaint.  Despite ServiceNow's actual notice of infringement, ServiceNow continues to make,

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[17] http://wiki.servicenow.com/index.php?title=MID_Server#gsc.tab=0;
https://docs.servicenow.com/product/mid_server/concept/c_MIDServer.html.

use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '783 patent.  ServiceNow engages in many activities that encourage its customers to infringe the '783 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Suites and related products;[18] (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Suites and related products; [19] (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Suites and related products; [20] (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow Service Automation Suites and related products;[21] (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Suites and related products;[22] (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Suites and related products that are intended to incite customer interest in the infringing product; [23] (vii) the publication of tutorial, demonstration, and "best practices" instructional videos concerning the

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[18] http://www.servicenow.com/products/service-automation-platform.html.
[19] http://www.servicenow.com/lpdem/demonow.html; https://www.youtube.com/user/servicenowdemo.
[20] https://docs.servicenow.com/common/reference/Welcome.html.
[21] http://info.servicenow.com/LP=1931.
[22]http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf.
[23] https://docs.servicenow.com/common/reference/Welcome.html;
http://www.servicenow.com/products/it-service-automation-applications/incident-management.html;
http://www.servicenow.com/products/it-service-automation-applications/problem-management.html;
http://www.servicenow.com/products/performance-analytics.html;
http://www.servicenow.com/products/it-service-automation-applications/asset-management.html;
http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html;
http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html.

ServiceNow Automation Suites and related products;[24] (viii) the provision of "customer support to every customer" as well as "user forums, blogs, product documentation, and useful solutions."[25]   Through these activities, ServiceNow specifically intends that its customers directly infringe the '783 patent.

47.     On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the '783 patent for at least the following reasons.  ServiceNow has had actual notice of the '783 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as ServiceNow MID Server applications, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Suites and related products used by ServiceNow's customers.  These infringing components are a material part of the ServiceNow Automation Suites and related products, which would not function properly without them.

48.     ServiceNow derives substantial revenue from selling its infringing products.

### COUNT 2: INFRINGEMENT OF U.S. PATENT NO. 8,554,750

49.     Paragraphs 1 through 48 are incorporated as if fully set forth herein.

50.     On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, at least claims 1, 3, 5, 6, 7, 8, 9, 10, 20, 22, 23, 24, 25, 26, 27, 29, 32, 33, 34, 35, and 36 of the '750 patent by making, using, offering to sell, selling, and/or providing installation, operational

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[24] https://www.youtube.com/user/servicenowdemo.
[25] http://www.servicenow.com/support.html.

support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release.

51.     For example, ServiceNow has directly infringed at least claims 1, 3, 5, 6, 7, 8, 9, 10, 20, 22, 23, 24, 25, 26, 27, 29, 32, 33, 34, 35, and 36 of the '750 patent by making, using, offering to sell, and/ or selling the feature ServiceNow calls Field Normalization with its ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release, in a manner that infringes the claims of the '750 patent. ServiceNow's Normalization automatically converts different forms of the same field or field value to a single, accepted field or field value. By forcing a field to use a simple, recognizable description for multiple variations of the same field or field value, normalization can eliminate duplicate records and make searches easier. In addition to ensuring consistency between different forms of the same field or field value, normalization can be configured to adjust queries automatically to return normalized results.[26]

52.     On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '750 patent for at least the following reasons. ServiceNow has had actual notice of the '750 patent no later than the filing date of this Complaint.  Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '750 patent.  ServiceNow engages in many activities that encourage its customers to infringe the '750 patent, including (i) advertising and promotion efforts for the ServiceNow

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[26] https://docs.servicenow.com/administer/field_administration/concept/c_FieldNormalization.html.

Service Automation Suites and related products;[27] (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Suites and related products; [28] (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Suites and related products; [29] (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow Service Automation Suites and related products;[30] (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Suites and related products;[31] (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Service Automation Suites and related products that are intended to incite customer interest in the infringing product;[32] (vii) the publication of tutorial, demonstration, and "best practices" instructional videos concerning the ServiceNow Automation Suites and related products;[33] (viii) the provision of "customer support to every customer" as well as "user forums, blogs, product documentation, and useful solutions." [34]  Through these activities, ServiceNow specifically intends that its customers directly infringe the '750 patent.

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[27] http://www.servicenow.com/products/service-automation-platform.html.

[28] http://www.servicenow.com/lpdem/demonow.html; https://www.youtube.com/user/servicenowdemo.

[29] https://docs.servicenow.com/common/reference/Welcome.html.

[30] http://info.servicenow.com/LP=1931.

[31]http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf.

[32] https://docs.servicenow.com/common/reference/Welcome.html;
http://www.servicenow.com/products/it-service-automation-applications/incident-management.html;
http://www.servicenow.com/products/it-service-automation-applications/problem-management.html;
http://www.servicenow.com/products/performance-analytics.html;
http://www.servicenow.com/products/it-service-automation-applications/asset-management.html;
http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html;
http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html.

[33] https://www.youtube.com/user/servicenowdemo.

[34] http://www.servicenow.com/support.html.

53.     On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the '750 patent for at least the following reasons.  ServiceNow has had actual notice of the '750 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as ServiceNow Field Normalization applications, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Suites and related products used by ServiceNow's customers.  These infringing components are a material part of the ServiceNow Automation Suites and related products, which would not function properly without them.

54.     ServiceNow derives substantial revenue from selling its infringing products.

### COUNT 3: INFRINGEMENT OF U.S. PATENT NO. 6,895,586

55.     Paragraphs 1 through 54 are incorporated as if fully set forth herein.

56.     On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, at least claims 1 and 4 of the '586 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release.

57.     For example, ServiceNow has directly infringed at least claims 1 and 4 of the '586 patent by making, using, offering to sell, and/or selling a Configuration Management Database (CMDB) with its ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release, in a manner that infringes the claims of the '586 patent.  ServiceNow's CMDB practices a method for managing an enterprise,

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wherein the enterprise comprises one or more networked computer systems.  ServiceNow's CMDB provides a hierarchical namespace in the form of objects that are instances of a defined class hierarchy schema.  A plurality of these objects are added to ServiceNow's CMDB through its Service Automation Suites, and these objects relate to software and hardware comprising the IT resources in the enterprise.  ServiceNow's CMDB objects are furthermore shared with computer systems in the enterprise and elsewhere by way of ServiceNow's user interface and other application programming interfaces such as REST (Representational State Transfer) and SOAP (Simple Object Access Protocol).  The objects stored in the CMDB also exhibit dynamic inheritance, where changes made to traits in a prototype object are inherited by instance objects as traits are changed.

58.     On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '586 patent for at least the following reasons. ServiceNow has had actual notice of the '586 patent no later than September 23, 2014.  Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '586 patent. ServiceNow engages in many activities that encourage its customers to infringe the '586 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Suites and related products;[35] (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Suites and related products;[36] (iii) the publication of data sheets

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[35] http://www.servicenow.com/products/service-automation-platform.html.
[36] http://www.servicenow.com/lpdem/demonow.html; https://www.youtube.com/user/servicenowdemo.

that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Suites and related products;[37] (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow Service Automation Suites and related products;[38] (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Suites and related products;[39] (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Suites and related products that are intended to incite customer interest in the infringing product;[40] (vii) the publication of tutorial, demonstration, and "best practices" instructional videos concerning the ServiceNow Automation Suites and related products;[41] (viii) the provision of "customer support to every customer" as well as "user forums, blogs, product documentation, and useful solutions."[42]  Through these activities, ServiceNow specifically intends that its customers directly infringe the '586 patent.

59.   On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the '586 patent for at least the following reasons.  ServiceNow has had actual notice of the '586 patent no later than September 23, 2014.  ServiceNow provides to its customers, the direct infringers, software components, such as the ServiceNow

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[37] https://docs.servicenow.com/common/reference/Welcome.html.
[38] http://info.servicenow.com/LP=1931.
[39] http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf.
[40] https://docs.servicenow.com/common/reference/Welcome.html;
http://www.servicenow.com/products/it-service-automation-applications/incident-management.html;
http://www.servicenow.com/products/it-service-automation-applications/problem-management.html;
http://www.servicenow.com/products/performance-analytics.html;
http://www.servicenow.com/products/it-service-automation-applications/asset-management.html;
http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html;
http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html.
[41] https://www.youtube.com/user/servicenowdemo.
[42] http://www.servicenow.com/support.html.

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Configuration Management, including the ServiceNow Configuration Management Database (CMDB), that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Suites and related products used by ServiceNow's customers.  These infringing components are a material part of the ServiceNow Automation Suites and related products, which would not function properly without them.

60.     ServiceNow derives substantial revenue from selling its infringing products.

### COUNT 4: INFRINGEMENT OF U.S. PATENT NO. 6,816,898

61.     Paragraphs 1 through 60 are incorporated as if fully set forth herein.

62.     On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, at least claims 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11 of the '898 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release.

63.     For example, ServiceNow has directly infringed at least claims 1, 2, 3, 4, and 5 of the '898 patent by making, using, offering to sell, and/or selling Service Monitoring (e.g., Performance Analytics) with its ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release, in a manner that infringes the claims of the '898 patent.  ServiceNow's Performance Analytics is a modular business intelligence application for providing performance management.  ServiceNow's Performance Analytics provides insights into performance data gathered across the organization.  Using customizable meta data, it records the performance of resources, systems and employees of the organization and performs insights into this data through visualizations and reports.  It provides an interface

between the user and the performance management system to enable collecting and processing the performance data.

64.     In addition, ServiceNow has directly infringed at least claims 1, 2, 3, 4, 6, 7, 9, 10, and 11 of the '898 patent by making, using, offering to sell, and selling a Discovery capability with its ServiceNow Service Automation Suites and related products, including but not limited to ServiceNow's Geneva release, in a manner that infringes the claims of the '898 patent.  ServiceNow's Discovery facilitates automated service management over a plurality of components within a network, such as email servers, web servers, printers, through the collection of data associated with the components.  ServiceNow's Discovery employs a method for providing an interface between a user and a performance management system connected to a network.  ServiceNow's Discovery receives script-based programs from the user, which may be a custom probe or custom sensor that can be used to retrieve data types not provided by the system, such as information related to devices unique to a customer's enterprise.  The user is able to modify and create new sensors and probes that can be used as a "service monitor" to monitor, for example, devices or applications in the customer's network and periodically retrieve and process data related to those devices or applications.

65.     On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '898 patent for at least the following reasons. ServiceNow has had actual notice of the '898 patent no later than September 23, 2014.  Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '898

patent.  ServiceNow engages in many activities that encourage its customers to infringe the '898

patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation

Suites and related products;[43] (ii) the publication of demonstrational videos concerning the

ServiceNow Service Automation Suites and related products;[44] (iii) the publication of data sheets

that purport to describe alleged benefits customers will derive from embracing the ServiceNow

Service Automation Suites and related products;[45] (iv) the publication of "white papers" that

purport to describe the alleged virtues of the ServiceNow Service Automation Suites and related

products;[46] (v) the publication of various "case studies" featuring alleged success stories

involving customers who have embraced the ServiceNow Service Automation Suites and related

products;[47] (vi) the publication of numerous webpages that provide details concerning various

aspects of the ServiceNow Automation Suites and related products that are intended to incite

customer interest in the infringing product;[48] (vii) the publication of tutorial, demonstration, and

"best practices" instructional videos concerning the ServiceNow Automation Suites and related

products;[49] (viii) the provision of "customer support to every customer" as well as "user forums,

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[43] http://www.servicenow.com/products/service-automation-platform.html.

[44] http://www.servicenow.com/lpdem/demonow.html; https://www.youtube.com/user/servicenowdemo.

[45] https://docs.servicenow.com/common/reference/Welcome.html.

[46] http://info.servicenow.com/LP=1931.

[47]http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf.

[48] https://docs.servicenow.com/common/reference/Welcome.html;
http://www.servicenow.com/products/it-service-automation-applications/incident-management.html;
http://www.servicenow.com/products/it-service-automation-applications/problem-management.html;
http://www.servicenow.com/products/performance-analytics.html;
http://www.servicenow.com/products/it-service-automation-applications/asset-management.html;
http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html;
http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html.

[49] https://www.youtube.com/user/servicenowdemo.

blogs, product documentation, and useful solutions."[50]   Through these activities, ServiceNow specifically intends that its customers directly infringe the '898 patent.

66.     On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the '898 patent for at least the following reasons.  ServiceNow has had actual notice of the '898 patent no later than September 23, 2014.  ServiceNow provides to its customers, the direct infringers, software components, such as the ServiceNow Performance Analytics, and ServiceNow Discovery applications, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Suites and related products used by ServiceNow's customers.  These infringing components are a material part of the ServiceNow Automation Suites and related products, which would not function properly without them.

67.     ServiceNow derives substantial revenue from selling its infringing products.

**COUNT 5: INFRINGEMENT OF U.S. PATENT NO. 7,966,398**

68.     Paragraphs 1 through 67 are incorporated as if fully set forth herein.

69.     On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, at least claims 9 and 15 of the '398 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products.

70.     For example, ServiceNow has directly infringed at least claims 9 and 15 of the '398 patent by making, using, offering to sell, and/or selling Synthetic Monitors with its ServiceNow Service Automation Suites and related products in a manner that infringes the

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[50] http://www.servicenow.com/support.html.

claims of the '398 patent.  ServiceNow's Synthetic Monitor uses the teachings of the '398 patent to record user transactions on a business service, and then to play back those recorded transactions, checking the validity and performance with which they are executed.   By periodically playing back and checking transactions in this way, ServiceNow's Synthetic Monitors use BMC's technology to allow the user to detect imminent and actual usage problems.[51]

71.    On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '398 patent for at least the following reasons. ServiceNow has had actual notice of the '398 patent no later than the filing date of this Complaint.  Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Suites and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '398 patent.  ServiceNow engages in many activities that encourage its customers to infringe the '398 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Suites and related products;[52] (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Suites and related products; [53] (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Suites and related products; [54] (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow

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[51] http://wiki.servicenow.com/pdf/ServiceWatch_User_Guide_ver_36.pdf.
[52] http://www.servicenow.com/products/service-automation-platform.html.
[53] http://www.servicenow.com/lpdem/demonow.html; https://www.youtube.com/user/servicenowdemo.
[54] https://docs.servicenow.com/common/reference/Welcome.html.

Service Automation Suites and related products;[55] (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Suites and related products;[56] (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Suites and related products that are intended to incite customer interest in the infringing product;[57] (vii) the publication of tutorial, demonstration, and "best practices" instructional videos concerning the ServiceNow Automation Suites and related products;[58] (viii) the provision of "customer support to every customer" as well as "user forums, blogs, product documentation, and useful solutions."[59]   Through these activities, ServiceNow specifically intends that its customers directly infringe the '398 patent.

72.    On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the '398 patent for at least the following reasons.  ServiceNow has had actual notice of the '398 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as ServiceNow Synthetic Monitors, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Suites and related products used by ServiceNow's customers.  These infringing components are a material

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[55] http://info.servicenow.com/LP=1931.
[56] http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf;
http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf.
[57] https://docs.servicenow.com/common/reference/Welcome.html;
http://www.servicenow.com/products/it-service-automation-applications/incident-management.html;
http://www.servicenow.com/products/it-service-automation-applications/problem-management.html;
http://www.servicenow.com/products/performance-analytics.html;
http://www.servicenow.com/products/it-service-automation-applications/asset-management.html;
http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html;
http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html.
[58] https://www.youtube.com/user/servicenowdemo.
[59] http://www.servicenow.com/support.html.

part of the ServiceNow Automation Suites and related products, which would not function properly without them.

73.     ServiceNow derives substantial revenue from selling its infringing products.

## **WILLFUL INFRINGEMENT**

74.     Paragraphs 1 through 73 are incorporated as if fully set forth herein.

75.     ServiceNow has hired several key ex-BMC employees, including engineers and sales personnel, who were intimately familiar with BMC's products and innovations and upon information and belief knew that BMC protects such products and innovations through patent protection.

76.     Upon information and belief, ServiceNow improperly used the BMC employees it hired to develop key aspects of the ServiceNow Service Automation Suites and related products, including at least some of the features that infringe the patents-in-suit.  Thus, upon information and belief, ServiceNow developed its infringing products by copying BMC's products, with full knowledge or willful blindness that BMC's products were patented and that copying BMC's products would result in patent infringement.

77.     ServiceNow's knowledge of BMC's products and patents is also evident from ServiceNow's public statements.  As explained in Paragraph 16, ServiceNow's founder, Fred Luddy, admitted that copying and stealing are key aspects of ServiceNow's business model. Given that BMC is the industry leader and ServiceNow's foremost competitor, and given the fundamental IT management technologies that are the subject of BMC's patents, it seems clear that Mr. Luddy was referring to BMC's ideas.  That conclusion is further reinforced by the inflammatory and disparaging comments reproduced in Paragraph 24 that ServiceNow's CEO,

Frank Slootman, has made about BMC, in which Mr. Slootman admitted that ServiceNow's business model is to "dismantl[e BMC's] business."

78.     ServiceNow's infringement occurred with knowledge of and/or objective recklessness and thus has been and will continue to be willful and deliberate.  ServiceNow's willful and deliberate infringement entitles BMC to enhanced damages under 35 U.S.C. § 285.

## IRREPARABLE HARM TO BMC

79.     BMC has been irreparably harmed by ServiceNow's acts of infringement, and will continue to be harmed unless and until ServiceNow's acts of infringement are enjoined by this Court.  BMC has no adequate remedy at law to redress ServiceNow's continuing acts of infringement.  The hardships that would be imposed upon ServiceNow by an injunction are less than those faced by BMC should an injunction not issue.  Furthermore, the public interest would be served by issuance of an injunction.

## PRAYER FOR RELIEF

**WHEREFORE,** BMC prays for the following relief:

1.     A judgment that ServiceNow directly and/or indirectly infringes the '783, '750, '586, '898, and '398 patents;

2.     A permanent injunction preventing ServiceNow and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '783, '750, '586, '898, and '398 patents;

3.     A judgment that ServiceNow's infringement has been willful;

4.     A ruling that this case is exceptional under 35 U.S.C. § 285;

5.      A judgment and order requiring ServiceNow to pay BMC damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of judgment, with an accounting, as needed, as well as treble damages for willful infringement under 35 U.S.C. §285;

6.      A judgment and order requiring ServiceNow to pay BMC's costs of this action (including all disbursements);

7.      A judgment and order requiring ServiceNow to pay pre-judgment and post-judgment interest on damages awarded; and

8.      Such other and further relief as the Court may deem just and proper.

Dated:  February 12, 2016

Respectfully submitted,


_____*/s/ Sam Baxter*_____
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